ARTICLE 25 INTELLECTUAL PROPERTY

A. The University and the Association are committed to preserving the principles of academic and intellectual freedom and ensuring that all creators of intellectual property have their rights protected.

B. GENERAL

1. The first consideration of the University in this Article is to promote the teaching, scholarly, research, and creative activity of Members. The University further recognizes that the community it serves may also benefit from inventive and creative advancements in artistic, creative, technical and scientific knowledge which have been achieved at the University.

2. The parties agree that ownership of intellectual property is recognized as an integral part of academic freedom.

3. No member shall be obliged to engage in the commercial exploitation of their work, nor to provide commercial justification for the direction of their research.

4. Members are free to publish or use other means to disseminate the result of their teaching or SRC duties.

5. Since the dissemination of knowledge is one of the primary functions of the University, SRC work should be such that the results may be freely published. The parties agree that where an external sponsor wishes to delay publication of work received under a contract with the sponsor, in no case shall publication be delayed longer than 24 months from the date of the submission of the final work to the sponsor. Such terms of external contracts also shall provide an exception to allow publication at any time of work done by the member where such disclosure is required in the public interest.

6. Copies of agreements with the University or external sponsor(s) ("external sponsors" includes but is not limited to government bodies, non-governmental organizations, individuals and corporations) regarding the intellectual property rights of members shall be provided to the Faculty Association. The copies will be kept confidential but for the purpose of advising on or enforcing the collective agreement.

7. The University agrees not to enter into any agreement to subcontract the services of any member without securing to the member whose services are subcontracted all the rights, privileges and benefits accorded to members in this Article, nor shall the University enter into any agreement

to create a consortium of universities or government departments or private companies, for the purposes of research or development or commercial exploitation or the creation of intellectual property without securing to the members who may be seconded to or employed by such consortia, departments or private companies all the rights, privileges and benefits accorded by the Article. If the University makes an agreement contrary to this provision and fails to secure the said rights, privileges and benefits to said members, the agreement shall not apply to those members unless there is a special agreement in writing between the University and the Association to waive this provision in that case.

8. For the purposes of this Article, "extraordinary support" shall be understood as including support which is greater than "ordinary support". "Ordinary support" shall be understood as the faculty member's regular salary, stipends, allowances and benefits; personnel, equipment, supplies and facilities funded by regular Department/School or Faculty or Library or Counselling Services budgets; normal use of the Library and University computing facilities.

9. The University, the Association, member, or members shall have the right to grieve disputes concerning intellectual property rights under the provisions of Article 9 (Grievances).

C. COPYRIGHT

1. Copyright applies to all original scholarly, scientific, literary, dramatic, musical, artistic and recorded works in any material form. Articles C.2 to C.11 inclusive also apply to related intellectual property rights in know-how and data.

2. Original works include but are not limited to: books, texts, articles, monographs, glossaries, bibliographies, cartographic materials, modular posters, study guides, laboratory manuals, correspondence course packages, interactive textbooks, course work delivered on the Internet, multimedia instructional packages, syllabi, tests and work papers, lectures, musical and/or dramatic compositions, choreographic works, performer's performances, unpublished scripts, films, filmstrips, charts, transparencies, other visual aids, video and audio tapes and cassettes, compact discs, computer programmes, data sets, databases, know how, live video and audio broadcasts, programmed instructional material, drawings, paintings, photographs, sculptures, and other works of art.

3. Subject to Article C.10, the parties agree that the ownership of all know how and copyright to all forms of scholarly, scientific, literary, dramatic, musical, artistic and recorded works shall belong to the member(s) responsible for the creation of the know how or work.

4. Subject to Article C. 10, the member(s) may retain ownership and copyright throughout their lifetime. At their death, transferable intellectual property rights existing at that time shall devolve to their estate.

5. The University agrees that all rights in the copyright to lectures and all intellectual property prepared by and/or delivered by a faculty member in association with their teaching assignment(s) shall vest in the member.

6. No member shall claim any copyright in any assessment, grading, report, or correspondence produced pursuant to their normal administrative duties within the University. Moreover, no member shall claim copyright in any work provided to the member to assist them in carrying out their duties and modified by the member such as a laboratory manual or claim copyright in any work produced and designed to assist in the day-to-day administration, operation and/or management of the University's affairs.

7. Where copyright has been assigned to it by a member(s), the University shall inform the Association and the creators in writing of any agreements it enters into purporting to assign copyright materials to any party except that member(s).

8. In the event that the University or assignee relinquishes their right in any work, all economic and moral rights in the work shall revert to the member(s) who created the work. In the event that the member(s) is (are) deceased, the rights shall revert to the estate of the member.

9. A member who creates a copyrighted work in the course of their normal duties and responsibilities as defined by this Agreement shall grant the University a non-exclusive, royalty-free, irrevocable and non-transferable licence to use such works in other, non-commercial teaching and/or SRC activities of the University subject to copyright requirements of academic journals and other vehicles of scholarly publication. This licence shall not apply to a member's personal documents, including unpublished lecture notes, course notes, lab notes or any work-in-progress. The member may withdraw the right to use because of dating or other bona fide scholarly reasons provided that the member has provided the University with reasonable notice of the change being sought and has been unsuccessful in effecting such change.

10. All copyright belongs to the member(s) who created the work, even if it was created solely on the University's time and with the University's faculties and resources except in cases of commissioned works where there is a contract to the contrary between the creator and the University outside of the member's duties under the Agreement. All such commissioned works contracts shall be in writing and copied to the

Association. Such agreements shall, at least, address the following matters:

a) definition of the material(s) to be produced;

b) scheduling and funding of the project;

c) ownership and use of the material(s);

d) rights of revision; and,

e) definition, distribution and timing of payment.

A member also has the right to negotiate, upon such terms as the member and the University may agree, the sale of work produced for University courses where the following conditions are all met, that is, the work is delivered:

a) outside the normal workload;

b) outside overload;

c) outside of the classroom; and,

d) for the purposes of distance education.

In the case of such a sale, the member shall continue to be entitled to use the work in an unrestricted fashion for internal University purposes in the course of their duties under this Agreement, including teaching a course on the same subject matter, as well as for articles, conference presentations, textbooks and other derivative creations unless such entitlement has been expressly waived as a condition of sale. Such a sale does not preclude a member from requiring that the work not be associated with the member, if that is the wish of the member, or requiring should the work be modified, and should the member wish, that the member no longer be associated with the work if the member originally chose to be associated with it. Moreover, nothing in this provision precludes the member from negotiating any moral rights associated with the work.

11. When the University has invested extraordinary support, including but not limited to, a grant to subsidize publication, it may negotiate specific conditions with the member(s) who is (are) the creator(s) to participate in the royalties. Whenever such a publication subsidy is offered, the University shall stipulate at the time it offers the subsidy if it wishes to negotiate a claim to royalties that may accrue from publication thus

supported; if it does not, it shall be deemed to have waived any claims to royalties or other income. All agreements between a member or members and the University pursuant to this paragraph shall be in writing and shall be copied to the Association. In no case shall the University's share of such royalties exceed 50% of gross royalties or other proceeds in any year. As soon as the University has recovered the full amount of the extraordinary support mentioned in this paragraph, its share of gross royalties or other proceeds shall be lowered to a figure no higher than 40% in any year. The University's share of such royalties or other proceeds which are in excess of the extraordinary support shall be used to fund activities in support of research and commercialization. Disbursements of these funds shall be reported to the Association annually, no later than 1 October for the immediately preceding academic year (1 September to 31 August). The burden of establishing the amount of extraordinary expenses incurred by the University shall lie on the University.

D. PATENTS AND RELATED INTELLECTUAL PROPERTY

1. Articles D.1 to D.13 apply to inventions, integrated circuits, plant cultivars, trade-marks, and industrial designs. "Patents and related intellectual property" means any result of intellectual or artistic activity, created by a member or members that can be owned by a person excluding know-how, data and works to which copyright alone attaches. Any provisions of this Article apply as well to a creator or a portion of patents and/or related intellectual property on a pro-rata basis.

2. Any decision concerning whether to seek patent protection rests exclusively with the creator(s).

3. Unless otherwise provided in the Article, the University makes no claim to any rights to any invention, improvement, design or development made by a member and the rights to such invention, improvement, design or development and any patents arising from them shall be the sole property of the member.

4. A member may, at their sole discretion, make their own arrangements for an application for patent, and for the commercial exploitation of any invention, improvement, design or development so patented, at their sole expense. In this case the member shall give notice to the University in writing of any patent application within three months of the date of such application and shall assert at that time whether it refers to an invention, improvement, design or development made with or without the "extraordinary" support of the University. If the University fails to challenge in writing the assertion of the member within three months of the receipt of notification of the application, the University shall be

deemed to have accepted as accurate the assertions set out in the member's notice. Failure by the member to give notice of a patent application within the prescribed time period shall maintain the University's rights until such notification. The burden of establishing the amount of extraordinary expenses incurred by the University shall lie on the University.

5. In such cases, where the University has provided extraordinary support (as defined in this Article), the member shall enter into an agreement with the University which shall provide that the University shall recover those costs by taking not more than 50% of the net revenues in each year until such time as the University has recovered its extraordinary support. Thereafter, the University shall receive not more than 40% of net revenues in each year. Where the University has not provided extraordinary support, (as defined in this Article), the University shall be entitled to 10% of the net revenues in each year.

6. A member may, at their sole discretion, enter into an agreement with the University under which the University assumes commercialization costs, which may include but are not limited to carriage of costs (in Canada and elsewhere) of the patent application and of the costs (in Canada and elsewhere) of commercial exploitation. In such case, the member(s), or their designate(s), shall negotiate an agreement with the University, which agreement shall include provisions addressing the issues of patent ownership, commercialization rights and revenue distribution. In no case shall such an agreement grant the creator less than 50% ownership (such amount to be divided among the creators where there are more than one), and in no case shall such an agreement grant the creator(s) less than 60% of net revenues in any given year, once the University has recovered its extraordinary support costs.

7. For the purpose of Article D. 6 above, the member shall communicate to the Office of the Vice-President, Research and Innovation (OVPRI), their desire to negotiate an agreement. Within ten (10) days of the receipt of such a request, the Vice-President, Research and Innovation or designate, shall enter into negotiations with the member or their designate. If the parties fail to negotiate an agreement within thirty (30) days of the start of such negotiations, the member or the University may submit the issue to arbitration, under Article 9 (Grievances).

8. Members have the right to withdraw from agreements with the University where the University has failed to bring appropriate skill and effort to bear on the exploitation over a period of time. In such a case the member may require all rights in the intellectual property to be reassigned to the member. In such a case the member shall arrange to reimburse the University for costs incurred.

9. All proceeds resulting from patents of inventions, improvements, designs or developments which have been funded by an external organization shall be divided between the member and the external funding agency according to written agreement between the member and the external funding agency. University recovery of overhead costs from the external funding agency shall be separate from and shall not include any such division of proceeds.

10. The University shall be deemed to have and the member shall grant to the University a non-exclusive, royalty-free, irrevocable and non-transferable licence to use solely for the University's internal use any patented invention, improvement, design or development when such was made, discovered or developed using University facilities, support personnel, support services, equipment or materials. Such right shall not include the right to exploit commercially any such invention, improvement, design or development, or to licence anyone to do so except as allowed in this Article.

11. The member shall take reasonable and practicable steps to ensure that the name of the University not be used in connection with inventions, improvements, designs or developments without the prior written agreement of the University, although nothing shall prevent the member from stating their employment, rank and title in connection with such inventions, improvements, designs or developments. Such statement shall not in any way imply approval, promotion or use of such invention, improvement, design or development by the University.

12. Any revenue that the University may receive under the terms of this Article shall be dedicated to research and other forms of scholarly activity and the Association shall receive notice of same.

13. Any member or members entering into a collaboration to create any new invention, improvement, design or development with another member or members, or with other, non-member employees of the University, or with person or persons external to the University, shall inform their collaborators that, where there is not a contract governing the collaboration, the provisions of this Article shall apply.